

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREAT AMERICAN E&S INSURANCE
COMPANY
580 Walnut Street
Cincinnati, OH 45202-3127

Plaintiff,

v.

JOHN P. CAWLEY, LTD d/b/a
CAWLEY'S IRISH PUB and
RESTAURANT
7919 West Chester Pike
Upper Darby, PA 19082
and
JOHN AND ANN MARIE CAWLEY
7919 West Chester Pike
Upper Darby, PA 19082
and
MATTHEW CRAWFORD
7 Wilde Avenue, Apartment 4
Drexel Hill, PA 19026
and
VINCENT TOMASSETTI
101 Westdale Road
Upper Darby, PA 19082

CIVIL ACTION NO.

10-cv-04853

ORDER

AND NOW, this day of , 2011, upon consideration of the Motion for Default Judgment of Plaintiff, Great American Insurance Company, and any response thereto, it is hereby ORDERED and DECREED that said motion is **GRANTED**. It is, therefore, ORDERED that JUDGMENT is entered by default against Matthew Crawford and Vincent Tomassetti.

BY THE COURT:

The Honorable Jan E. DuBois

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Plaintiff,

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101 Westdale Road
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CIVIL ACTION NO.

10-cv-04853

**MOTION FOR DEFAULT JUDGMENT AS TO DEFENDANTS MATTHEW
CRAWFORD AND VINCENT TOMASSETTI**

Plaintiff, Great American E & S Insurance Company, by and through its counsel,
Marshall, Dennehey, Warner, Coleman and Goggin, hereby moves this Honorable Court to enter
Judgment of Default as to defendants Matthew Crawford and Vincent Tomasetti, pursuant to
Federal Rule of Civil Procedure 55(b). The grounds for this Motion are set forth in the
accompanying Memorandum of Law and Supporting Affidavit. The proposed Order is also
attached.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN, P.C.

A handwritten signature in black ink, appearing to be 'ERB', is written over a horizontal line.

ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E & S
Insurance Company

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CIVIL ACTION NO.

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**MEMORANDUM OF LAW OF IN SUPPORT OF THE MOTION FOR
DEFAULT JUDGMENT**

Plaintiff, Great American E & S Insurance Company ("Great American") hereby submits this Memorandum in support of its Motion for Judgment of Default against defendants Matthew Crawford and Vincent Tomasetti. Default Judgment is proper as these defendants have neither answered nor otherwise responded to the complaint, or requested that an extension of time from plaintiff or this Honorable Court, and plaintiff has filed an Entry of Default.

I. BACKGROUND

Great American filed this Declaratory Judgment Action seeking a declaration that it is not obligated to provide a defense and indemnity to John P. Cawley Ltd. and John and Ann Marie Cawley, pursuant to a policy of insurance issued to him by Great American bearing policy number PAC 3172719, for a lawsuit filed by Matthew Crawford and Vincent Tomassetti, naming John P. Cawley, Ltd. d/b/a Cawley's Irish Pub and Restaurant (hereinafter "the Pub") and John and Ann Marie Cawley as a defendants, among others, in the Delaware County Court of Common Pleas, No. 10-008425 ("the underlying action").

Great American served its Declaratory Judgment Complaint on Mark Jaffe, the attorney representing Matthew Crawford and Vincent Tomassetti on October 27, 2010 pursuant to has executed acceptance of service. The defendants never filed a responsive pleading to the Declaratory Judgment Complaint, nor requested any extension of plaintiff or this Honorable Court. Accordingly, plaintiff filed a request for entry of default with the clerk of courts on December 1, 2010. (A copy of the Requests for Entry of Default, including an Affidavits of Service expressing the same are attached hereto as Exhibit "A"). Default was entered by the clerk of courts on that date.

II. ARGUMENT

Default Judgment as to the defendants is appropriate because the defendants have not filed a response to Great American's Complaint, requested an extension, nor have these defendants offered any explanation that would constitute good cause for their failure to comply with the Federal Rules.

This Honorable Court has discretion under Rule 55(b) to enter a default judgment after, as here, a default has been entered pursuant to Rule 55(a). *See Husain v. Casino Control*

Comm'n, 265 Fed. Appx. 130 (3d. Cir. 2008) (not for precedent); *Moore's Federal Practice and Procedure*, § 55.05(2). Unless the amount is a sum certain, application to the court is needed to have default judgment entered. Fed. R. Civ. P. 55(b)(2). Here, because declaratory relief is sought, Great American requires a court order for default judgment.

In *System Industries. v. Han*, 105 F.R.D. 72 (E.D. Pa. 1985), the Court found no difficulty in concluding that entry of default judgment was appropriate in a case where the defendant failed to answer the Complaint and took no action whatsoever with respect to the litigation. The allegations in the Complaint filed in *System Industries*, if taken as true, stated a claim for which the plaintiff in that case was entitled to relief. The Court found no obvious reason why the defendant should not be bound by the allegations in the Complaint having taken no action to respond to them. Therefore, the Court directed the clerk to enter default against the defendant and judgment entered in favor of the plaintiff.

In the instant case, Matthew Crawford and Vincent Tomassetti have failed to answer the Complaint. The allegations, if taken as true, state a claim upon which Great American would be entitled to its requested relief.

Great American seeks a declaration that it has no obligation to defend or indemnify John P. Cawley, Ltd. d/b/a Cawley's Irish Pub and Restaurant and John and Ann Marie Cawley in the underlying action. Simultaneously with this motion, Great American has filed a motion for summary judgment against the remaining defendants, John P. Cawley, Ltd. and John and Ann Marie Cawley contending that the policy's exclusion for claims arising from an assault and battery preclude an obligation to defend or indemnify the underlying action. Great American's motion is incorporated by reference herein

If an to the extent that summary judgment is granted in favor of Great American, then Great American is entitled to the same relief against the non-answering defendants. Accordingly, Great American respectfully moves for default judgment against Matthew Crawford and Vincent Tomassetti.

III. CONCLUSION

Based upon the forgoing, plaintiff, Great American respectfully requests that this Honorable Court enter an order in the form attached hereto, declaring that Great American owes no obligation to defend or indemnify John P. Cawley, Ltd. and John and Ann Marie Cawley for the lawsuit captioned Matthew Crawford and Vincent Tomassetti v. John P. Cawley, Ltd. and John and Ann Marie Cawley, et al., Delaware County Court of Common Pleas, No. 10-008425.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN, P.C.



ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E & S
Insurance Company

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
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GREAT AMERICAN E&S INSURANCE :
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Plaintiff,

v.

CIVIL ACTION NO.

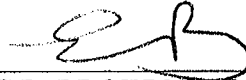
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and :
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7919 West Chester Pike :
Upper Darby, PA 19082 :
and :
MATTHEW CRAWFORD :
7 Wilde Avenue, Apartment 4 :
Drexel Hill, PA 19026 :
and :
VINCENT TOMASSETTI :
101 Westdale Road :
Upper Darby, PA 19082 :

Defendants.

REQUEST TO ENTER DEFAULT PURSUANT TO FED. R. CIV. P. 55(a)

Pursuant to Fed. R. Civ. P. 55(a), kindly enter default against Defendant Matthew Crawford for failure to plead or otherwise defend the Complaint for Declaratory Judgment as appears from the attached Affidavit of Eric R. Brown, Esquire.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN



ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E&S
Insurance Company

Dated: 12/1/10

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and :
VINCENT TOMASSETTI :
101 Westdale Road :
Upper Darby, PA 19082 :

10-cv-04853

Defendants.

AFFIDAVIT FOR ENTRY OF DEFAULT BY CLERK

I, Eric R. Brown, Esquire, being duly sworn, deposes and says that:

1. I am the attorney for Plaintiff, Great American E&S Insurance Company in the above-captioned action.

2. Plaintiff's Complaint for Declaratory Judgment was filed with the Court on September 20, 2010, with an amended complaint file October 13, 2010.

3. Plaintiff's Amended Complaint was served on served on Mark Jaffe, Esquire, attorney for Matthew Crawford by execution of an acceptance of service on September 27, 2010.

4. By letter from Judge DuBois Court Deputy to Mark Jaffe, Esquire, Matthew Crawford was advised to file an answer to the amended complaint by November 29, 2010 or face potential entry of default.

5. To the best of my knowledge, the Defendant is not an infant or incompetent person.

6. To the best of my knowledge, the Defendant is not in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940.

7. Defendant Matthew Crawford has not filed any responsive pleading to the Amended Complaint for Declaratory Judgment nor has he requested or been granted an extension to answer or otherwise respond to the Complaint for Declaratory Judgment.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN



ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E&S
Insurance Company

Dated: 12/1/10

CERTIFICATE OF SERVICE

I, Eric R. Brown, Esquire, do hereby certify that a true and correct copy of the Affidavit to Enter Default has been electronically filed on December 1, 2010 and is available for viewing and downloading from the ECF system. The Affidavit to Enter Default was also sent by regular mail to counsel on December 1, 2010 as follows:

Mark Jaffe, Esquire
McCann Schaible & Wall, LLC
Two Penn Center Plaza
1500 John F. Kennedy Boulevard
Suite 1100
Philadelphia, PA 19102

John J. McCreesh, Esquire
McCreesh McCreesh McCreesh & Cannon
7053 Terminal Square
Upper Darby, PA 19082

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY



ERIC R. BROWN
Attorney for Plaintiff

Dated: 12/1/2010

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10-cv-04853

Defendants.

REQUEST TO ENTER DEFAULT PURSUANT TO FED. R. CIV. P. 55(a)

Pursuant to Fed. R. Civ. P. 55(a), kindly enter default against Defendant Vincent Tomassetti for failure to plead or otherwise defend the Complaint for Declaratory Judgment as appears from the attached Affidavit of Eric R. Brown, Esquire.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

A handwritten signature in black ink, appearing to be 'EB' or 'ERB', written over a horizontal line.

ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E&S
Insurance Company

Dated: 12/1/10

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4. By letter from Judge DuBois Court Deputy to Mark Jaffe, Esquire, Vincent Tomassetti was advised to file an answer to the amended complaint by November 29, 2010 or face potential entry of default.

5. To the best of my knowledge, the Defendant is not an infant or incompetent person.

6. To the best of my knowledge, the Defendant is not in the military service of the United States as defined in the Soldiers' and Sailors' Civil Relief Act of 1940.

7. Defendant Vincent Tomassetti has not filed any responsive pleading to the Amended Complaint for Declaratory Judgment nor has he requested or been granted an extension to answer or otherwise respond to the Complaint for Declaratory Judgment.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN



ERIC R. BROWN, ESQUIRE
Attorney for Plaintiff, Great American E&S
Insurance Company

Dated: 12/1/10

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John J. McCreesh, Esquire
McCreesh McCreesh McCreesh & Cannon
7053 Terminal Square
Upper Darby, PA 19082

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY



ERIC R. BROWN
Attorney for Plaintiff

Dated: 12/1/2010

CERTIFICATE OF SERVICE

I, Eric R. Brown, Esquire, do hereby certify that a true and correct copy of the Motion for Default has been electronically filed on January 14, 2010 and is available for viewing and downloading from the ECF system. The Motion for Default was also sent by regular mail to counsel on January 14, 2011 as follows:

Mark Jaffe, Esquire
McCann Schaible & Wall, LLC
Two Penn Center Plaza
1500 John F. Kennedy Boulevard
Suite 1100
Philadelphia, PA 19102

John J. McCreesh, Esquire
McCreesh McCreesh McCreesh & Cannon
7053 Terminal Square
Upper Darby, PA 19082

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY 

ERIC R. BROWN
Attorney for Plaintiff

Dated: 1/14/2011